

## **Rule 5, Ariz. R. Crim. Proc.**

### **Preliminary Hearings: Witnesses and record of proceeding. Revised 12/2009**

Rule 5.2, Ariz. R. Crim. Proc., provides:

The magistrate shall issue process to secure the attendance of witnesses and, shall provide for a verbatim record of proceedings, which may be by a certified court reporter, electronic, or other means in the discretion of the Presiding Judge of the Superior Court unless a certified court reporter is requested by a party. Such request for a certified court reporter shall be honored unless the court is in a geographic location where certified court reporters are not reasonably available.

The Comment to this Rule states that its principal function is to provide a means for subpoenaing defense witnesses, since A.R.S. § 13-4071(B)(2) allows a prosecutor to issue process to compel attendance of prosecution witnesses.

The record of the proceeding may be made electronically if neither party asks for a court reporter. However, if a party requests that a court reporter be present, the magistrate must grant that request “unless the court is in a geographic location where court reporters are not reasonably available.” The Comment to the Rule states that in such situations, “ it is contemplated that the recording equipment used by the court be designed to maximize the accuracy of the audiotaped or videotaped record.”